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In the Supreme Court of the United States

OCTOBER TERM, 1934

Nos. ——

RECONSTRUCTION FINANCE CORPORATION, PETITIONER

v.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

PETITION

Reconstruction Finance Corporation (hereinafter sometimes called the petitioner), a corporation organized and existing under an Act of Congress approved January 22, 1932 (c. 8, 47 Stat. 5), all of the stock of which is owned by the United States, prays that writs of certiorari issue to review the judgments of the Circuit Court of Appeals for the Seventh Circuit entered in the above causes on July 23, 1934 (R. 332, 338), affirming the injunctional order of the United States District Court for the Northern District of Illinois, entered on November 22, 1933 (R. 101).

OPINIONS BELOW

The injunctional order of said District Court was issued without opinion. The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 313) is not yet reported.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on July 23, 1934 (R. 326). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 938).

QUESTION PRESENTED

Where a debtor railroad and its properties are being administered in reorganization proceedings brought under Section 77 of the National Bankruptcy Act, as amended, c. 204, 47 Stat. 1474, may the bankruptcy court lawfully enjoin holders of secured notes of the debtor railroad from selling pursuant to the terms of such notes the collateral security held by them?

STATUTES INVOLVED

The relevant portions of the National Bankruptcy Act, as amended, are set out in the Appendix, *infra*, pp. 22–41.

STATEMENT

The Chicago, Rock Island and Pacific Railway Company (hereinafter called the debtor), an Illinois and Iowa corporation, on June 7, 1933, filed

a petition (R. 2) in the United States District Court for the Northern District of Illinois to effect a plan of reorganization under Section 77 of the Bankruptcy Act, as amended.

At the time of the filing of said petition of the debtor the debtor was indebted to the petitioner, Reconstruction Finance Corporation, in the principal amount of $13,718,700, evidenced by notes of the debtor for that amount maturing March 1, 1934. As collateral security therefor there was pledged with the petitioner $7,575,000 face amount of bonds of the debtor, $27,599,973.34 face amount (exclusive of $4,380,000 face amount pledged under the prior lien of a mortgage and held by the trustee or trustees of such mortgage) of bonds of companies other than the debtor, $747,492.51 face amount of receivers' certificates of a company other than the debtor, and an assignment of the debtor's distributive share (estimated by the debtor at $1,400,000) in certain assets of The Railroad Credit Corporation (R. 37).

The notes evidencing this indebtedness provided, in case the debtor defaulted in paying either principal or interest on said notes, or failed on notice to furnish additional collateral, or became insolvent or went into receivership, that the Reconstruction Finance Corporation was authorized to sell said collateral through a broker or at public or private sale, either for cash or upon credit, and without any demand, advertisement, or notice. The Recon-

struction Finance Corporation was further authorized to purchase said collateral for itself. (For provisions of the notes see R. 46.)

Debtor is also indebted to five banks on notes in the aggregate amount of $4,125,000, in substantially the same form, likewise secured by collateral (R. 39).

On September 26, 1933, the debtor filed a petition (R. 37) asking the District Court for instructions as to payment of interest due to petitioner and the banks on October 1, 1933, and for a determination that in the event of default in payment of such interest an order should be issued enjoining petitioner and the banks aforesaid from selling the collateral security for the above-mentioned notes.

One of the protective committees (for the debtor's General Mortgage 4% Bonds), named as respondents herein, filed an answer to the petition of the debtor (R. 59) asking that said District Court enjoin the sale of the collateral. The other protective committees filed either affidavits (R. 65) or briefs in support of the petition.

On November 22, 1933, the District Court, without opinion, issued the requested injunctional order, restraining the petitioner and the five banks from "* * * converting, selling, or otherwise disposing of the collateral held by them as security for the promissory notes of the debtor, or any part

thereof, until further order of this court." The order was, by its terms, predicated on the assumption that the sale of the collateral in question would "* * * hinder, impede, obstruct, delay, and in effect prevent the orderly preparation and consummation of a plan of reorganization * * *" of the debtor, and that the injunction was "* * * necessary for the enforcement of the provisions of Section 77 * * *" (R. 101).

The District Court had previously, while holding the injunction question under advisement, ordered one installment of interest falling due October 1, 1933, to be paid; but the only moneys received since such date by the petitioner properly applicable to interest on its claims are two minor payments, representing interest in part on one of the bond issues included in the pledged securities held by the petitioner (R. 341). Neither has the injunction order been vacated or in any way modified by the District Court.

An appeal from said order was taken by the petitioner from the District Court (R. 163) and a petition (R. 273) to revise said order was allowed by the Circuit Court of Appeals for the Seventh Circuit (R. 278). These causes were subsequently consolidated for hearing by order of the Circuit Court of Appeals (R. 298). Meantime, on November 22, 1933, Joseph B. Fleming, Frank O. Lowden, and James E. Gorman were appointed trustees for

the Debtor by the District Court (R. 105), and on their petition they were made additional appellees in each case pending in the Circuit Court of Appeals by order of that court (R. 310).

A hearing was had in the Circuit Court of Appeals on May 28, 1934; and on July 23, 1934, that court rendered an opinion affirming the order of the District Court (R. 313). On the same day judgments affirming were entered in each of the two appeals pending in the Circuit Court of Appeals (R. 332, 338).

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred in holding—

(a) That the District Court had jurisdiction over petitioner in the premises;

(b) That, even if it had such jurisdiction, it had power to enjoin the petitioner from enforcing against the pledged collateral the terms of the notes;

(c) That this petitioner should be enjoined from selling the collateral held by it as security for the notes of the debtor;

(d) That this petitioner should be enjoined from selling the collateral held by it consisting of the secured obligations of companies other than the debtor;

(e) That the sale of such collateral would defeat the purposes of Section 77 of the Bankruptcy Act, as amended;

(f) That the District Court was justified in issuing the injunction on the record in this case; and

(g) That the order of the District Court should be affirmed.

REASONS FOR GRANTING THE WRITS

1. The decision of the court below involves an important question of Federal law which has not been, but should be, settled by this Court.

2. The decision is in conflict with the overwhelming weight of authority prior to the enactment of said Section 77 and, likewise, with the applicable decisions of the Supreme Court.

3. In affirming the injunctional order of the District Court, issued upon a record that does not support the order, and in disregard of the express language of the statute, the Circuit Court of Appeals has so far sanctioned a departure by the lower court from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

4. The question involved is one of great public importance, since the effect of the decision is to deny to holders of collateral notes similarly situated the right to enforce against collateral the terms of their notes against railroads which are subject to said Section 77. The petitioner holds notes of railroads of a face value in excess of $325,000,000, containing terms substantially identical with those contained in the notes involved in this case.

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Wherefore, it is respectfully submitted that this petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

STANLEY REED,
General Counsel, Reconstruction Finance Corporation, Counsel for Petitioner.

OCTOBER 1934.

BRIEF IN SUPPORT OF PETITION

For brevity, this brief is limited to argument, since the formal statements required by the rules of the Supreme Court have been set forth in the petition.

ARGUMENT

I

THE DECISION INVOLVES AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

The primary question involved in this case is whether under Section 77 of the Bankruptcy Act, as amended, the District Court was authorized to issue an injunction against the sale of collateral pursuant to the terms of notes held by secured creditors.

This question is one of first impression under Section 77.

The injunctional order of the District Court (R. 101) is not limited to the stay of judicial proceedings. It is worded broadly so as to restrain the sale of the petitioner's collateral in any manner, whether in a judicial proceeding or otherwise.

No express authority for the issuance of such an order is to be found anywhere in Section 77 of the Bankruptcy Act, as amended.

Subdivision (l) of said Section 77 is as follows:

> (l) In addition to the provisions of section 11 of this Act for the staying of pending

> suits against the debtor, such suits shall be further stayed until after final decree [and] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree.[1]

This is the only clause in Section 77 relating to injunctions. It fails to authorize the court to enjoin a secured creditor from selling his collateral pursuant to the terms of his note.

The Circuit Court of Appeals has affirmed the order of the District Court on the theory that the power to issue the injunctional order was conferred, not expressly, but as an *incident* to other powers expressly conferred by Section 77. See the opinion of the court below (R. 324):

> Our conclusion is that the restraining order is an exercise of authority on the part of the court which was necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of a power which was incident to those expressly conveyed by Congress to the court.

Perhaps this conclusion was reached in view of another statement of the court with which petitioner agrees (R. 323):

> Surely we are justified in giving to the amendment a liberal construction, one that

---

[1] The word in brackets was apparently omitted from the statute by inadvertence, since otherwise the sentence construction is defective.

is consonant with the purposes of this remedial legislation.

However, it is difficult to believe that Congress would not have *expressly* conferred upon the court the power to issue such an injunction had it been the intention of Congress to grant the power. The power to issue such an injunction is an extreme and unprecedented invasion of the rights of collateral creditors, and even under a "* * * liberal construction * * * consonant with the purposes of this remedial legislation" (R. 323) it should not be lightly implied.

But, further, if Congress by plain implication has *denied* the power, as subdivision (l) of Section 77 clearly shows, such power cannot still be implied as an "incident" to powers expressly conferred.

To say that such power may be implied as an "incident" really amounts to legislation by the court. The court has in effect rewritten the statute to include an unprecedented power—a power that invades not only the remedy but the essence of the contract of a short-term collateral creditor. The essence of such a contract is the right to pick the time, after default, to enforce the terms of the note against the collateral. Liquidity is the *sine qua non* of short-term credit.

This result was reached by the court even though the power to enjoin the enforcement of the notes must be held to have been *purposely excluded by Congress,* if effect is given to the usual canons of statutory construction.

Under the well-established rule *"expressio unius est exclusio alterius"* applied to the jurisdiction of courts in *In re Heath,* 144 U. S. 92 (1892), where this Honorable Court said (p. 93): "* * * that the affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases * * *", the power to enjoin creditors from enforcing their notes against collateral is clearly negatived by this statute.

Had Congress intended that the enforcement of notes against pledged collateral might be enjoined, it would have been a simple matter to add to subdivision (1) a provision to that effect. The important point is that Congress did not do so.

The construction of the court below wholly ignores, and gives no effect to, the words "commencement or continuance of any judicial proceeding" contained in subdivision (1). The court construes Section 77 *exactly as if these words were omitted* and the Act provided that the judge might enjoin the "enforcement of any lien upon the trust estate."

To give *any effect whatever* to the words "commencement or continuance of any judicial proceeding", which under all accepted rules of statutory construction the court is bound to do, it must be held that these words constitute a *limitation* on the power of the court to enjoin the enforcement of liens.

In drafting subdivision (1), Congress was considering and providing for injunctions to prevent

the enforcement of liens upon the trust estate. In providing that "the commencement or continuance of any judicial proceeding" might be enjoined, Congress clearly marked off the limits of the power, for, as stated by this Court in *In re Heath*, *supra*, the affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of the power in other cases.

II

THE DECISION IS IN CONFLICT WITH THE WEIGHT OF AUTHORITY PRIOR TO THE AMENDMENT AND, LIKEWISE, WITH THE APPLICABLE DECISIONS OF THIS COURT

The opinion of the court below avoids a discussion of the decisions prior to the enactment of Section 77.

The court stated (R. 320):

> That the order may have been sustained under the Bankruptcy Act, before amendment under certain circumstances and as against creditors who occupy positions similar to those of the appellants is earnestly asserted. We are, however, for brevity's sake, avoiding a discussion of such questions because unnecessary.

The law prior to the enactment of the amendment is determinative of the issue in this case because, as already mentioned, subdivision (l) contains the only clause in Section 77 relating to injunctions, and because of subdivision (n) of Section 77, reading as follows:

> (n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the

> duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

For fifty years it has been well settled that pledgees holding in their own possession collateral, consisting of obligations of companies other than the debtor, have the unrestricted right to sell the collateral when they choose in spite of the receivership or bankruptcy of the pledgor. The reasons which impelled the adoption of this rule are well stated in the opinion of the court in the case of *In re Hudson River Navigation Corporation*, 57 F. (2d) 175 (C. C. A. 2d, 1932), where the court, in affirming an order of the District Court denying an injunction against the sale of collateral, stated (pp. 175–176):

> For practical purposes the pledgee has therefore immediate dominion as between the two, and with it goes the power to resist any action by the bankruptcy court, which must be founded on the fact that the bankrupt had such dominion, when the petition was filed. This was implicit in our ruling in *In re Mertens*, 144 F. 818, and we directly held so in *In re Mayer*, 157 F. 836; since when it has been generally understood that *bankruptcy does not touch the power of a pledgee of shares of stock to close out his collateral. Nothing would be more disturb-*

> *ing to transactions of the kind than a doubt thrown upon that ruling. Millions of dollars are daily lent upon like collateral, which fluctuates from hour to hour; unless the pledgee is free to choose his time to sell, his security may disappear.* The same is not indeed true of shares like those at bar, or of notes, neither of which vary rapidly in value; but the same legal reasons exist as to them also. The pledgee, having taken possession of the documents, supposes himself for just that reason to be the sole judge of his necessities, and lends on that understanding. So long as he keeps within the terms of the agreement, he need not concern himself with the pledgor's fate, or that of his creditors, who must stand in his shoes. (Italics supplied.)

In the present proceeding the collateral consists entirely of mortgage bonds or other secured obligations of companies other than the debtor, with the exception of $7,575,000 of the bonds of the debtor itself (R. 37).

But even as to the pledged bonds of the debtor itself, the overwhelming weight of authority prior to the enactment of Section 77 held that a Court of Bankruptcy would not enjoin the sale of the *secured* obligations of the debtor in the possession of the pledgee.

In *Jerome* v. *McCarter*, 94 U. S. 734 (1876), which has never been questioned, limited or criticized by any later decision, this Court in considering the rights of a pledge of secured mort-

gage bonds of the borrower itself, after the bankruptcy of the borrower, stated (p. 739):

> There is some proof that, when the company became bankrupt (Aug. 28, 1872), some of the bonds were held as collaterals for loans made to the company smaller in amount than the bonds pledged. But the bonds were subsequently sold by the pledgees, and the present holders hold them by absolute right. The position that the pledgees could not sell the pledge after the adjudication in bankruptcy, is quite untenable. It is sustained by nothing in the Bankrupt Act. The bonds were negotiable instruments. They passed by delivery, and even were there no expressed stipulation in the contracts of pledge, that the pledgee might sell on default of the pledgor, such a right is presumable from the nature of the transaction. *Certainly the Bankrupt Act has taken away no right from a pledgee secured to him by his contract.*
>
> In regard to the bonds covered by the McCarter mortgage, which is the one now in suit, we find no error in the decree of which the appellants can complain. Most of those bonds, though at first issued as collaterals for loans made to the mortgagors, have been sold, and they are now owned by the purchasers. There are some, it is true, that are still held in pledge; but the pledgees have a

> clear right to use them, either by sale or by collection, until the full amount of the debts due from the mortgagors is satisfied. * * * (Italics supplied.)

See also *Hiscock* v. *Varick Bank of New York*, 206 U. S. 28 (1907), in which this Court held that under Section 57 (h) of the Bankruptcy Act a creditor has an absolute right to sell his collateral according to the contract of pledge.

We submit that the decision of the court below is in conflict with the overwhelming weight of authority prior to the enactment of Section 77, and, likewise, is in conflict with the applicable decisions of this Court.

Mississippi Valley Trust Co. v. *Railway Steel Spring Co.*, 258 Fed. 346 (C. C. A. 8th, 1919), is the only case involving *secured* bonds of the same obligor such as constitute a part of the security held by the petitioner in this case which so far as we have been able to ascertain has been decided contrarily to the rule applied in the foregoing cases. This decision may be readily distinguished since it depended on the legal status of unissued treasury bonds under the Missouri law as expounded by the courts of that State.

III

THE DECISION IS NOT SUPPORTED BY THE RECORD, IS IN DISREGARD OF THE EXPRESS LANGUAGE OF THE STATUTE, AND, FURTHERMORE, IS BASED ON AN ADMITTEDLY ERRONEOUS ASSUMPTION OF FACT

We submit that the conclusions contained in the opinion of the court below that "it would be quite

impossible to proceed with any reorganization" if the petitioner and the banks should sell their collateral without control by the court (R. 324), and that such sale might defeat the purposes of Section 77 (R. 324), are not substantiated by any evidence of record in this case.

On the contrary, it would appear that under Section 77, contingent claims represented by securities of the debtor held as collateral must be treated as outstanding for the purposes of the reorganization plan, its acceptance and confirmation.

The last sentence of subdivision (b) of Section 77 reads as follows:

> The term "creditors" shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.

There is no specific provision in the Act which excepts contingent claims represented by securities of the debtor held as collateral from being included in classes of outstanding securities for the purpose of voting upon a plan. Hence, such claims must be treated as outstanding under the express provision of law above quoted.

We accordingly submit that in affirming the injunctional order issued by the District Court, upon

insufficient evidence that a reorganization could not be effected were the pledgees permitted to sell their collateral, and in disregard of the express language of the statute, the court below has so far sanctioned a departure by the lower court from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision.

Furthermore, in its opinion the court below has erroneously assumed that the issuance of the injunction has not resulted in serious injury to the position of the petitioner and the banks.

In its opinion, the Circuit Court states (R. 325):

> Appellants have received and will probably continue to receive the prompt payment of interest upon their claims secured by the debtor's and its subsidiaries' bonds.

As appears from the stipulation which has been signed by all the parties in this case (R. 341), petitioner received the interest due upon the notes of the debtor up until the time the present injunction was issued by the District Court. But since the date of the issuance of the injunction nearly a year ago the payment of interest has been discontinued on the notes of the debtor held by the petitioner and the banks. The only moneys received since such date by the petitioner properly applicable to interest on its claims are two minor payments, representing interest in part on one of the bond issues included in the pledged securities held by the petitioner (R. 341). From the language of

the petition for Order No. 15 (R. 37) it would appear that *the purpose of the injunction was to permit the cessation of interest payments without any risk of a sale of collateral by collateral note-holders.*

IV

THE QUESTION INVOLVED IS OF SUCH IMPORTANCE THAT WRITS OF CERTIORARI SHOULD BE GRANTED

It is submitted that the writs herein should be granted since, among other reasons, the question involved in this case is one of great public interest, gravity and importance. *In Lau Ow Bew, Petitioner,* 141 U. S. 583 (1891).

The decision of the Circuit Court of Appeals is highly disturbing to existing arrangements and practices in railroad finance. Since a debtor railroad is permitted to file a voluntary petition under Section 77, the effect of the construction placed on the Act by the court below is to take from the holders of short-term notes secured by collateral the essence of their contract, which is the right to choose the time, after default, to realize upon their collateral. This necessarily limits banks and governmental agencies from lending money to the railroads, and tends to destroy the credit of the railroads, adding to their difficulties at a time when they are faced with a major financial crisis because of lack of business, the competition of unregulated forms of transportation, and a rise in operating expenses due to wage increases, compulsory pensions,

and the increased cost of coal and other materials. It conflicts with the policies expresed by Congress in the Acts which empower the Reconstruction Finance Corporation and the Federal Emergency Administrator of Public Works to make loans to railroads.

It likewise casts doubt upon the enforcibility and collectibility of the loans which the Government has made to railroads through governmental agencies. The petitioner, Reconstruction Finance Corporation, has outstanding claims aggregating over $325,000,000 evidenced by notes of railroads containing terms substantially the same as contained in the notes involved in this case.

CONCLUSION

It is therefore respectfully submitted that the petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General,
STANLEY REED,
General Counsel,
C. M. CLAY,
JOHN L. HOPKINS,
JAMES A. SPROWL,
Counsel for Petitioner,
Reconstruction Finance Corporation.

OCTOBER 1934.

APPENDIX

NATIONAL BANKRUPTCY ACT AS AMENDED

SEC. 2. The courts of bankruptcy as defined in the previous chapter, namely, the district courts of the United States in the several States, the Supreme Court of the District of Columbia, the district courts of the several Territories and possessions to which this title is, or may, after July 1, 1898, be applicable, and the United States court in the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898, or may be thereafter held, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *. [11 U. S. C. and App., Sec. 11.]

SEC. 57. (h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise,

or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance. [11 U. S. C., Sec. 93 (h).]

SEC. 73. ADDITIONAL JURISDICTION.—In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in sections 74, 75, and 77 of this Act. [11 U. S. C. Sup. VII, Sec. 201.]

SEC. 77. (a) Any railroad corporation may file a petition stating that the railroad corporation is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction the railroad corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission hereinafter called the commission: *Provided,* That when any railroad, although engaged in interstate commerce, lies wholly within one State, such proceedings shall be brought in the Federal district court within the State in which the railroad is located. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this Act. Upon the filing of such

a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it if not so satisfied. If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located. The railroad corporation shall be referred to in the proceedings as a "debtor." Any corporation, the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor under this section, or substantially all of whose properties are operated by such a debtor under lease or operating agreement may file, with the court in which such other debtor had filed such a petition, and in the proceeding upon such petition under this section, a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of such other debtor; and thereupon such court shall have the same jurisdiction with respect to it, its property and its creditors and stockholders as the court has with respect to such other debtor. Creditors of any railroad corporation having claims or interests aggregating not less than 5 per centum of all the indebtedness of such railroad corporation as shown in the latest annual report which it has filed with the commission at the time when the

petition is filed, may, if the railroad corporation has not filed a petition under this section, but subject to first having obtained the approval of the Interstate Commerce Commission, after hearing, upon notice to such railroad corporation, file with the court in which such railroad corporation might file a petition under the provisions of this section, a petition stating that such railroad corporation is insolvent or unable to meet its debts as they mature and that such creditors propose that it shall effect a reorganization; upon such filing of such a petition copies thereof shall be filed with the commission and served by the petitioning creditors forthwith upon the railroad corporation; the railroad corporation shall, within ten days after such service, answer such petition; if such answer shall admit the jurisdiction of the court, that the claims of the petitioning creditors constitute the amounts necessary to entitle them to file such petition under this section, and that the railroad corporation is either insolvent or unable to meet its debts as they mature, the court shall, upon the filing of the recommendations of the commission in writing, enter an order approving the petition as properly filed under this section if satisfied that it complies with this section and has been filed in good faith, or disapprove it if not so satisfied; and if so approved the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section; if such answer shall deny either the jurisdiction of the court or that the claims of the petitioning creditors constitute such necessary amounts or that the railroad corporation is insolvent or unable to meet its debts as they mature,

the court shall summarily try the issues, and if after the filing of the recommendations of the commission in writing it shall find that the petition complies with this section, and has been filed in good faith, the court shall enter an order approving the petition as properly filed under this section, and the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section; otherwise the court shall dismiss the petition.

(b) A plan of reorganization within the meaning of this section (1) shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include, in addition, provisions modifying or altering the rights of stockholders generally, or of any class of them; (3) shall provide adequate means for the execution of the plan, which may, so far as may be consistent with the provisions of sections 1 and 5 of the Interstate Commerce Act, as amended, include the transfer or conveyance of all or any part of the property of the debtor to another corporation or to other corporations or the consolidation of the properties of the debtor with those of another railroad corporation, or the merger of the debtor with any other railroad corporation and the issuance of securities of either the debtor or any such corporation or corporations, for cash, or in exchange for existing securities, or in satisfaction of claims or rights, or for other appropriate purposes; and (4) may deal with all or any part of the property of the debtor. The term "securities" shall include evidences of indebtedness, either secured or unse-

cured, bonds, stocks, certificates of beneficial interest therein, and certificates of beneficial interest in property. The term "stockholders" shall include the holders of voting trust certificates. The term "creditors" shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.

(c) Upon approving the petition as properly filed the judge (1) may temporarily appoint from a panel of standing trustees qualified for such service to be selected and designated in advance by the commission a trustee or trustees of the debtor's estate, who shall have all the title and, subject to the control of the judge and consistently with the provisions of this section, shall exercise all the powers of a trustee appointed pursuant to section 44 or any other section of this Act, and, subject to the judge's control and the jurisdiction of the commission as provided by the Interstate Commerce Act as amended, shall have the power to operate the business of the railroad corporation; (2) shall fix the amount of the bond of such trustee or trustees and require the debtor, the trustee, or trustees to give such notice as the order may direct to creditors and stockholders and to cause publication thereof to be made at least once a week for two successive weeks of a hearing to be held within thirty days after such appointment, at which hearing or any adjournment thereof the judge may make permanent such ap-

pointment, or may terminate it and may, in the manner herein provided for the appointment of trustees, appoint a substitute trustee or substitute trustees, and in the same manner may appoint an additional trustee or additional trustees, and shall fix the amount of the bond of the substitute or additional trustee or trustees; the trustee or trustees and their counsel shall receive such compensation as the judge may allow within a maximum approved by the commission; (3) may, for cause shown, and with the approval of the commission, in accordance with section 20 (a) of the Interstate Commerce Act as amended, authorize the trustee or trustees to issue certificates for cash, property, or other consideration approved by the judge, for such lawful purposes and upon such terms and conditions and with such security and such priority in payments over existing obligations, secured or unsecured, as might in an equity receivership be lawful; (4) shall require the debtor, at such time or times as the judge may direct and in lieu of the schedules required by section 7 of this Act, to file such schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan; (5) shall determine a reasonable time within which the claims and interests of creditors and stockholders may be filed or evidenced and after which no such claim or interest may participate in any plan except on order for cause shown; the manner in which such claims and interests may be filed or evidenced and allowed, and, for the purposes of the plan and its acceptance, the division of creditors and stockholders into classes according to the nature of their respective claims and interests; (6) shall cause

reasonable notice of such determination, or of the dismissal of the proceedings, or the allowance of fees or expenses, to be given creditors and stockholders by publication or otherwise; (7) if a plan of reorganization is not proposed or accepted, or, if proposed and accepted, is not confirmed, within such reasonable time as the judge may, upon cause shown and after considering any recommendation which has been filed by the commission, allow, may dismiss the proceeding; (8) may, within such maximum limits as are fixed by the commission, as elsewhere provided in subdivision (f) of this section, allow a reasonable compensation for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceeding and plan by officers, parties in interest, reorganization managers, and committees or other representatives of creditors or stockholders, and the attorneys or agents of any of the foregoing, and by such assistants as the commission with the approval of the judge may specially employ; and (9) may on his own motion or at the request of the commission refer any matters for consideration and report, either generally or upon specified issues, to one of several special masters who shall have been previously designated to act as special masters in any proceedings under this section by order of any Circuit Court of Appeals and may allow such master a reasonable compensation for his services. The Circuit Court of Appeals of each circuit shall designate three or more members of the bar as such special masters whom they deem qualified for such services, and shall from time to time revise such designations by changing the persons designated or reducing or adding to their number, as the public

interest may require: *Provided, howevr,* That there shall always be three of such special masters qualified for appointment in each circuit who shall in their respective circuits hear any matter referred to them under this section by a judge of any District Court. For all purposes of this section claims against a railroad corporation which would have been entitled to priority over existing mortgages if a receiver in equity of the property of the debtor had been appointed by a Federal court at the date of the filing of the petition hereunder shall be entitled to such priority, and holders of such claims shall be treated as a separate class of creditors. If in any case in which the issues have not already been tried under the provisions of subdivision (a) of this section any of the debtor's creditors shall, prior to the hearing provided for in subdivision (c), clause (2), of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and unless the material allegations of the petition are sustained by the proofs shall dismiss the petition. Any creditor or stockholder shall be heard on the question of the permanent appointment of any trustee or trustees, the proposed recommendation, approval, or confirmation of any reorganization plan, and upon filing a petition for leave to intervene on such other questions arising in the proceeding as the judge shall determine. The debtor, or the trustees, if appointed, shall within fifteen days or, upon cause shown, such other time as may be directed by the judge, prepare (1) a list of all known bondholders and creditors of, or claimants against, the debtor or its property, and the amounts

and character of their debts, claims, and securities, and the last known post-office address or place of business of each creditor or claimant, and (2) a list of the stockholders of the debtor, with the last known post-office address or place of business of each. The contents of such lists shall not constitute admisisons by the debtor or the trustees in a proceeding under this section or otherwise. Such lists shall be open to the inspection of any creditor or stockholder of, or claimant against, the debtor, during reasonable business hours, upon application to the debtor or trustees, as the case may be.

(d) Before creditors and stockholders of the debtor are asked finally to accept any plan of reorganization, the Interstate Commerce Commission shall after due notice hold a public hearing at which the debtor shall present its plan of reorganization and at which, also, such a plan may be presented by the trustee or trustees, or by or on behalf of creditors of the debtor, being not less than 10 per centum in amount of any class of creditors. Following such hearing, the commission shall render a report in which it shall recommend a plan of reorganization (which may be different from any which has been proposed) that will, in its opinion, be equitable, will not discriminate unfairly in favor of any class of creditors or stockholders, will be financially advisable, will meet with the requirements of subdivision (g) of this section, and will be compatible with the public interest. In such report the commission shall state fully the reasons for its conclusions, and it may thereafter, upon petition for good cause shown, and upon further hearing if the commission shall deem necessary,

modify any of its recommendations and conclusions in a supplemental report stating the reasons for such modification. Thereafter the plan of reorganization recommended by the commission shall be submitted in such manner as the commission may direct to the creditors and stockholders of the debtor for acceptance or rejection, together with the report or reports of the commission thereon; and the commission may at the same time afford an opportunity to accept or reject any other plan of reorganization filed as in this subdivision (d) provided.

(e) A plan of reorganization shall not be finally approved by the commission until it has been accepted in writing and such acceptance has been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims or interests would be affected by the plan, and by or on behalf of stockholders of the debtor holding two-thirds of the stock of each class: *Provided, however,* That if adequate provision is made in the plan for the protection of the interests, claims, and liens of any class of creditors or stockholders in the manner provided in clauses (5) and (6) of subdivision (g), of this section, then the acceptance of the plan by such class of creditors or stockholders shall not be requisite to the approval of the plan: *And provided further,* That the acceptance of stockholders shall not be requisite to the confirmation of the plan if (1) the judge shall have determined (a) that the corporation is insolvent, or (b) that the interests of stockholders will not be adversely affected by the plan, or (c) that the debtor has, pursuant to authorized corporate action, accepted the plan, and its stockholders are

bound by such acceptance. For the purposes of this section acceptance by a creditor or stockholder shall include acceptance in writing executed by him; or acceptance by his duly authorized attorney or committee acting under authority executed by him subsequent to the recommendation of the plan by the commission. Upon acceptance of the plan in accordance with the provisions of this subdivision (e) the commission may, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, or consolidation or merger of properties, to the extent contemplated by the plan consistent with the purposes of the Interstate Commerce Act as amended. If the United States of America is directly a creditor or stockholder, the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the interests or claims of the United States.

(f) If the plan recommended by the commission is accepted as provided in subdivision (e), the commission shall thereupon certify the plan to the court together with its approval thereof and that the same has been so accepted, together with a report of the proceedings before it and its conclusions thereon. If the plan accepted as provided in subdivision (e) differs from the plan recommended by the commission it shall, upon acceptance, be submitted to the commission, which shall hear all interested parties upon such notice and subject to such rules and regulations as it shall prescribe. If after such hearing the commission determines that the accepted plan in its opinion is equitable and will not discriminate unfairly in favor of any class of creditors or stockholders; will be financially ad-

visable; will meet the requirements of subdivision (g) of this section; and will be compatible with the public interest; the commission shall thereupon certify the plan to the court, together with its approval thereof and that the same has been duly accepted, and together with a report of the proceedings before it and its findings and conclusions thereon. The commission shall also, after hearing if necessary, fix the maximum compensation and reimbursement which may be allowed by the court pursuant to clause (8) of subdivision (c) of this section: *Provided,* That unless good and sufficient reasons appear therefor no allowance for fees or compensation shall be made to officers of corporations who have acted as managers or in any capacity in connection with the reorganization when such corporation had an interest in the matter. No plan of reorganization shall be confirmed in any proceeding under this section except upon the approval of the Interstate Commerce Commission certified to the court. If the commission shall decline to issue such a certificate it shall file in the proceeding its decision, specifying the particular grounds upon which it bases its disapproval of the plan.

(g) Upon such approval by the commission, and after hearing such objections as may be made to the approved plan, the judge shall confirm the plan if satified that (1) the approved plan complies with the provisions of subdivision (b) of this section, is equitable and does not discriminate unfairly in favor of any class of creditors or stockholders; (2) all amounts to be paid by the debtor or by any corporation or corporations acquiring the debtor's assets, for services or expenses incident to the reorganization and cost of financing,

have been fully disclosed and are reasonable, or are to be subject to the approval of the judge; (3) the offer of the plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by this Act; (4) the approved plan provides for the payment of all costs of administration and other allowances made by the court, except that compensation or reimbursement provided for in subdivision (c), clause (8), of this section may be paid in securities provided for in the plan if those entitled thereto will accept such payment and the court finds such compensation reasonable; (5) the approved plan provides, with respect to stockholders of any class the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provision of subdivision (h) of this section, and of which more than one-third have not accepted the plan, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the plan either by a sale of the property at not less than a fair upset price, or by appraisal and payment in cash either of the value of their stock or, at the objecting stockholder's election, of the value of the securities, if any, allotted to such stock under the plan; (6) the plan provides with respect to any class of creditors, the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens, and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less

than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by appraisal and payment in cash of either the value of such liens and claims or, at the objecting creditors' election, the value of the securities allotted to such liens and claims under the plan. Section 57, clause (h), of this Act shall be applicable to the appraisal of securities under this section, and the value of the unpaid balance shall be appraised as an unsecured claim; and (7) the debtor, and every other corporation issuing securities or acquiring property under the plan, is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to carry out the plan. In the case of a sale or appraisal under clause (5) or (6) of this subdivision (g) the court shall refer to the commission for its consideration and determination the amount to be fixed as the upset price and the appraisal of any securities.

(h) Upon such confirmation the provisions of the plan shall be binding upon (1) the corporation, (2) all stockholders if the judge shall have determined (a) that the corporation is insolvent, or (b) that the interests of stockholders will not be adversely affected by the plan, or (c) that the debtor has, pursuant to authorized corporate action, accepted the plan and its stockholders are bound by such acceptance, (3) all stockholders of each class of which two-thirds in amount shall have accepted the plan, (4) all creditors whose claims are payable in cash in full under the plan, (5) all creditors entitled to priority under subdivision (c) of this section, whose claims are not payable in cash in full under the plan, provided two-thirds in amount of such creditors shall have accepted the plan in writ-

ing filed in the proceeding, (6) all other unsecured creditors, provided two-thirds in amount of such creditors shall have accepted the plan in writing filed in the proceeding, and (7) all secured creditors of each class of which two-thirds in amount shall have accepted the plan. The confirmation of the plan shall discharge the debtor from its debts except as provided in the plan. Upon confirmation of the plan by the judge, the debtor and other corporations affected by the plan, or organized or to be organized for the purpose of carrying out the plan, shall, subject to the jurisdiction of the Commission, have full power and authority to put into effect and carry out the plan and the orders of the judge relative thereto, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. In the event that the judge should disapprove the plan he shall file an opinion stating his reasons therefor.

(i) The provisions of sections 721, 722, 723, 724, and 725 of the Revenue Act of 1932 shall not apply to the issuance, transfers, or exchange of securities or filing of conveyances to make effective any plan of reorganization confirmed under the provisions of this section.

(j) Upon the confirmation of the plan the property dealt with by the plan, when transferred and conveyed to the debtor or other corporation or corporations provided for by the plan, or if no trustee or trustees have been appointed when held by the debtor pursuant to the plan, shall, as the court may direct, be free and clear of all claims of the debtor, its stockholders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing

such transfer and conveyance, and the court may direct the trustee or trustees, or if there be no trustee or trustees the debtor, to make any such transfer and conveyance, and may direct the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceeding a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, and closing the case.

(k) If a receiver of all or any part of the property of a corporation has been appointed by a Federal or State court, whether before or after this amendatory Act takes effect, the railroad corporation may nevertheless file a petition or answer under this section at ar time thereafter, but if it does so and the petition is approved the trustee or trustees appointed under the provisions of this section shall be entitled forthwith to possession of such property, and the judge shall make such orders as he may deem equitable for the protection of obligations incurred by the receiver and for the payment of such reasonable administrative expenses and allowances in the prior proceeding as may be fixed by the court appointing said receiver within maximum limits approved by the commission. If a receiver has been appointed by a Federal or State court prior to the dismissal under subdivision (c), clause (7), of a proceeding under this section, the judge may include in the order of dismissal appropriate provisions directing the trustee to transfer possession of the debtor's property within the territorial jurisdiction of such court to the receiver so appointed, upon such terms as the judge may deem equitable for the protection of obligations incurred

by the trustee and for the payment of administrative expenses and allowances in the proceeding hereunder. For the purposes of this section the words "Federal court" shall include the district courts of the United States and of the Territories and possessions to which this Act is or may hereafter be applicable, the Supreme Court of the District of Columbia, and the United States Court of Alaska

(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree.

(m) A certified copy of an order confirming a plan of reorganization shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order was made. A certified copy of an order directing the transfer and conveyance of the property dealt with by the plan as provided in subdivision (j) of this section shall be evidence of the transfer and conveyance of title accordingly, and if recorded shall impart the same notice that a deed if recorded would impart.

(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudi-

cation had been entered on the day when the debtor's petition was filed.

(o) No judge or trustee acting under this Act shall change the wages or working conditions of railroad employees, except in the manner prescribed in the Railroad Labor Act, or as set forth in the memorandum of agreement entered into in Chicago, Illinois, on January 31, 1932, between the executives of twenty-one standard labor organizations and the committee of nine authorized to represent Class 1 railroads.

(p) No judge or trustee acting under this Act shall deny or in any way question the right of employees on the property under his jurisdiction to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees, or to use the funds of the railroad under his jurisdiction, in maintaining so-called company unions, or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

(q) No judge, trustee, or receiver acting under this Act shall require any person seeking employment on the property under his jurisdiction to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, trustee, or receiver, then the said judge, trustee, or receiver, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

(r) The term "railroad corporation" as used in this Act means any common carrier by railroad engaged in the transportation of persons or property in interstate commerce, except a street, suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment.

(s) In proceedings under this section, claims for personal injuries to employees of a railroad corporation, and claims of personal representatives of deceased employees of a railroad corporation arising under State or Federal laws, shall be preferred claims against the assets of such railroad corporation in receivership or in reorganization as herein provided, such claims to be subordinate only to costs of administration of such receivership or reorganization. [11 U. S. C. Sup. VII, Sec. 205.]

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